

as if born in it. The stain of their birth, so far as respects the capacity to inherit from the mother and from each other is removed, and the birth of other children of the same mother, under happier circumstances, was never designed by the makers of the law to renew the blot with its disabling consequences.

The second question arises upon the deed of William Earle to Elizabeth Dawes, dated the 3d of August, 1839, which recites that the grantor, in the event of his dying before the said Elizabeth, is anxious to secure to her and her heirs his undivided interest in the estate of his father, Thomas Earle, upon condition that, during the life of the grantor, he was to retain and exercise full and complete control over the property, and to receive and enjoy the rents, issues, and profits thereof, and in consideration of the premises thus recited, and of natural love and affection, Earle, by the deed, conveyed to Mrs. Dawes the property in question, upon condition, nevertheless, that he, the grantor, died before her, and not otherwise, with *habendum* to her and her heirs, subject to the condition aforesaid.

The condition has not been complied with, Mrs. Dawes being dead, and Earle, the grantor, being alive; and the argument of the counsel for her heirs is that the condition is void, either as a condition subsequent, or as being inconsistent with the estate given by the deed.

But it appears to me very clear, that the condition that Mrs. Dawes should survive Earle was a *precedent* and not a subsequent condition, and as the event has not taken place, the estate never vested in her. Earle reserved the possession and use of the property to himself during his life, and in the granting part and *habendum* of the deed, her title is expressly made to depend upon her surviving him—upon condition that he dies before her, and not otherwise.

Whether a condition is to be construed to be precedent or subsequent is always a question of intent, and it is immaterial whether the clause creating the condition is placed prior or posterior in the deed, the question, without regard to locality,